



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR part 52

[EPA-R09-OAR-2021-0134; FRL-10020-94-Region 9]

#### **Determination to Defer Sanctions; Arizona; Pinal County Air Quality Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted rules and other materials on behalf of the Pinal County Air Quality Control District (PCAQCD or District) that correct deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning ozone nonattainment requirements. This determination is based on a proposed approval, published elsewhere in this *Federal Register*, of PCAQCD's reasonably available control technology (RACT) SIP rules and negative declarations. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous partial disapproval and limited disapproval by the EPA in 2019 is now deferred. If the EPA finalizes its approval of PCAQCD's submission, relief from these sanctions will become permanent.

**DATES:** This interim final determination is effective on [Insert date of publication in the *Federal Register*]. However, comments will be accepted on or before [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0134 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4216 or by email at [Law.Nicole@epa.gov](mailto:Law.Nicole@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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### **I. Background**

On August 9, 2019 (84 FR 39196), the EPA issued a final partial approval/partial disapproval and a limited approval/limited disapproval for revisions to the PCAQCD portion of the Arizona SIP that had been submitted by ADEQ to the EPA for approval (the 2017 RACT Submittal). The 2017 RACT Submittal action addressed the PCAQCD’s RACT SIP requirements under the Act. In our 2017 RACT Submittal action, we determined that while

PCAQCD's SIP revision submittal strengthened the SIP, the submittal did not fully meet the requirements for RACT SIPs under the CAA. Our 2017 RACT Submittal action included a final partial disapproval and limited disapproval action under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this partial disapproval and limited disapproval action under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of September 9, 2019, and highway sanctions 6 months later.

On August 5, 2020, PCAQCD revised its rules and adopted additional negative declarations and on August 20, 2020, ADEQ submitted the revised rules and negative declarations to the EPA for approval into the Arizona SIP (2020 RACT Submittal). These negative declarations and revised rules are intended to address the partial disapproval and limited disapproval issues under title I, part D that we identified in our 2017 RACT Submittal action. In the Proposed Rules section of this ***Federal Register***, we have proposed approval of PCAQCD's 2020 RACT Submittal. Based on this proposed approval action, we are also taking this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2017 RACT Submittal action's partial disapproval and limited disapproval of PCAQCD's RACT SIP and rules, because we believe that the 2020 RACT Submittal corrects the deficiencies that triggered such sanctions.<sup>1</sup>

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of PCAQCD's 2020 RACT Submittal with respect to the title I, part D deficiencies identified in our 2017 RACT Submittal action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2017

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<sup>1</sup> 40 CFR 52.31(d)(2).

RACT Submittal action would be permanently terminated on the effective date of our final approval of PCAQCD's 2020 RACT Submittal.

## **II. EPA Action**

We are making an interim final determination to defer CAA section 179 sanctions associated with our partial disapproval and limited disapproval action on August 9, 2019 of PCAQCD's RACT SIP and rules with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve PCAQCD's 2020 RACT Submittal, which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that PCAQCD's 2020 RACT Submittal addresses the deficiencies under part D of title I of the CAA identified in our 2017 RACT Submittal action and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### **III. Statutory and Executive Order Reviews**

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

- Is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: February 23, 2021.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

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